

**RESOLUTION NO. 78395**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE DENYING A PLANNED DEVELOPMENT REZONING FROM THE R-1-8 SINGLE FAMILY ZONING DISTRICT TO THE R-1-8 (PD) PLANNED DEVELOPMENT ZONING DISTRICT AND DENYING A PLANNED DEVELOPMENT PERMIT TO ALLOW THE DEMOLITION OF AN EXISTING RESIDENCE AND ACCESSORY STRUCTURES FOR THE CONSTRUCTION OF THREE SINGLE-FAMILY DETACHED RESIDENCES ON INDIVIDUAL LOTS, INCLUDING TWO FLAG LOTS, ON A 0.42-GROSS ACRE SITE LOCATED ON THE SOUTHEAST SIDE OF CURTISS AVENUE, APPROXIMATELY 650 FEET SOUTHERLY OF WILLOW STREET (1220 CURTISS AVENUE)**

**FILE NOS. PDC17-018 and PC17-011**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on March 15, 2017, and April 27, 2017, applications (File Nos. PDC17-018 and PD17-011) were filed by the applicant, HOMETEC Architecture/Rich and Holly Hartman, with the City of San José for a Planned Development Rezoning from the R-1-8 Single Family Zoning District to the R-1-8 (PD) Planned Development Zoning District, and a Planned Development Permit to allow the demolition of an existing residence and associated accessory structures for the construction of three single-family detached residences on individual lots, including two flag lots, on a 0.42-gross acre site, on that certain real property situated in the R-1-8 Single Family Zoning District and located on the southeast side of Curtiss Avenue, approximately 650-feet southerly of Willow Street (1220 Curtiss Avenue, which real property is sometimes referred to herein as the "subject property"); and

**WHEREAS**, the subject property is all that real property more particularly described and depicted in Exhibit "A," entitled "Legal Description," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

**WHEREAS**, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said application on September 13, 2017, notice of which was duly given; and

**WHEREAS**, at said hearing, the Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

**WHEREAS**, at said hearing the Planning Commission made a recommendation to the City Council respecting said matter based on the evidence and testimony; and

**WHEREAS**, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a hearing on said application, notice of which was duly given; and

**WHEREAS**, at said hearing, this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

**WHEREAS**, at said hearing this City Council received and considered the reports and recommendation of the City's Planning Commission and the City's Director of Planning, Building and Code Enforcement; and

**WHEREAS**, at said hearing, this City Council received in evidence a plan for the subject property entitled, "Three New Homes for GoldSilverIsland Properties, LLC" dated received July 14, 2017, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

**WHEREAS**, said public hearing before the City Council was conducted in all respects

as required by the San José Municipal Code and the rules of this City Council; and  
**WHEREAS**, this City Council has heard and considered the testimony presented to it at the public hearing, and has further considered written materials submitted on behalf of the project applicant, City staff, and other interested parties;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:**

After considering evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts and findings regarding this proposed project:

1. **Site Description and Surrounding Uses.** The subject site, located at 1220 Curtiss Avenue, contains approximately 0.42-gross acres and is located on the southeast side of Curtiss Avenue, approximately 650-feet southerly of Willow Street. The property is developed with an existing single-family residence and accessory structures located behind the residence. The subject site has a Residential Neighborhood General Plan designation and is in the R-1-8 Residential Zoning District.

The property is surrounded on all sides by single-family residences except for one parcel to the east which is developed as a multi-family condominium. All properties in the surrounding area follow a historic development pattern of one single-family detached home on one lot with the exception of two multifamily residential parcels to the north (zoned R-M Multiple Family) and three flag-lot developments to the south and north of the subject site.

In 1986, one larger lot located south of the subject site at 1254 Curtiss Avenue was subdivided into three smaller parcels and developed with three single-family residences on small lots (File No. PDC86-045). In 2002 and in 2005, two additional large lots located at 1182 and 1163 Curtiss Avenue were subdivided into three and four smaller parcels and developed with three and four single-family residences, respectively (File Nos. PDC01-084 and PDC05-031). Development approvals for all of these small-lot subdivisions were obtained prior to adoption of the *Envision San José 2040 General Plan*. There are roughly 12 other large lots with deep setbacks located in this area of Curtiss Avenue.

2. **Project Description.** An application for a Planned Development Rezoning from the R-1-8 Single Family Zoning District to the R-1-8 (PD) Planned Development Zoning District; and a Planned Development Permit to allow the demolition of an existing residence and associated accessory structures and the development of three single-family detached residences on individual lots, including two flag lots, on a 0.42-gross acre subject site.

3. **Project Background.** On May 18, 2015, a different applicant submitted a Preliminary Review Application (File No. PRE15-091) for the proposed demolition of an existing single-family residence and associated accessory structures at 1220 Curtiss Avenue, in the Willow Glen neighborhood, and the development of three single-family detached residences on individual lots on the same 0.42-gross acre site. This application proposed a total of four new lots, including two flag lots and one common driveway lot, ranging in size from approximately 4,200 square feet to 5,500 square feet.

Staff advised the applicant that the proposed development project could not be supported at this location because it was inconsistent with *Envision San José 2040 General Plan* Land Use Policies LU-11.1 and LU11.2 and Council Policy 6-19: Flag Lots, which provides specific criteria and standards for the development of flag lots in single-family neighborhoods. These policies discourage both the development of flag lots in non-hillside areas and new residential development in established neighborhoods that does not reflect the prevailing density and character of the surrounding neighborhood. Planning staff recommended that the applicant consider a secondary dwelling unit at the rear of the property pursuant to Section 20.30.150 (Secondary Units) of the San José Municipal Code. A copy of the Department of Planning's comment letter was attached to the staff report submitted to the Planning Commission.

On March 15, 2017, the current applicant submitted a Planned Development Permit application to develop the existing 18,573-square foot lot with three new single-family detached residences on individual lots, including two flag lots and one common driveway lot. Council Policy 6-19 requires flag lot development to be considered through the Planned Development process. Unit No. 1 of the proposed Planned Development would have a lot size of approximately 5,208 square feet (56 feet by 93 feet) with frontage on Curtiss Avenue. The existing one-story single-family residence on the Unit No. 1 site, which was built in 1905, would be demolished and replaced with a new 2,651-square foot two-story residence.

Proposed Unit No. 2 and Unit No. 3 would be interior flag lots located behind Unit No. 1, with lot sizes of approximately 3,747 square feet (56 feet by 67 feet) and 5,945 square feet (78 feet by 77 feet), respectively. Unit No. 2 would be developed with a 2,592-square foot single family residence, and Unit No. 3 would be developed with a 3,004-square foot single-family residence. All three units would include attached two-car garages and would share a private driveway on a separate common lot (Parcel A) with access from Curtiss Avenue.

In March 2017, Planning staff advised the applicant that the proposed Planned Development Permit could not be supported due to incompatibility with the General Plan and City Council policies pertaining to flag lots and neighborhood preservation. Furthermore, a Planned Development Zoning application had not been filed. During this meeting, the applicant and property owner were notified

that a Preliminary Review Application (File No. PRE15-091) had previously been submitted in May 2015 for the subject site and that due to similar reasons, could not be supported. The applicant was advised to: 1) withdraw the application, or; 2) proceed with the proposed Planned Development Permit and associated Planned Development Rezoning with a recommendation to the Planning Commission for denial.

On April 27, 2017, the applicant and the property owner elected to proceed with the application process and submitted a Planned Development Rezoning application. The applicants requested that their rezoning application along with the Planned Development Permit application proceed straight to public hearing before the Planning Commission and City Council without full project review by the Department of Planning, Building and Code Enforcement and without any environmental review. As a result, neither the Public Works Department nor the Fire Department have provided a Final Memorandum with feedback on the proposed project, and no CEQA analysis and determination have been completed for the proposed project. Therefore, staff advised both the Planning Commission and City Council that if the City Council supports the possible flag lot development, staff will need to complete required project review and conduct full environmental analysis for subsequent consideration by the Planning Commission and City Council.

4. **General Plan.** The subject site has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Residential Neighborhood (RN). This designation is applied broadly throughout the City to encompass most of the established, single-family residential neighborhoods. The intent of this designation is to preserve the existing character of these neighborhoods and to strictly limit new development to infill projects which closely conform to the existing prevailing neighborhood character. New infill development should improve and/or enhance existing neighborhood conditions by completing the existing neighborhood pattern and maintaining the quality and character of the surrounding neighborhood. Maximum density in areas designated RN shall be limited to eight dwelling units per acre (DU/AC), or the prevailing neighborhood density, whichever is lower.

*Analysis:* As noted above, the intent of the Residential Neighborhood designation is to preserve the existing character of established, single-family neighborhoods and to strictly limit new development to infill projects which closely conform to the existing prevailing neighborhood character as defined by density, lot size and shape, massing and neighborhood form and pattern. Particular emphasis should be given to maintaining consistency with other homes fronting onto the public street to be shared with the proposed new project.

*The existing prevailing neighborhood character of Curtiss Avenue is defined by single-family homes and standard lot shapes (rectangles) of varying depths. The neighborhood includes a small pocket of multi-family residential development and*

*three flag-lot developments, which were created by subdividing larger lots with deep rear setbacks into smaller lots. Roughly twelve lots of similar size and shape remain along Curtiss Avenue. In recent years, a significant number of older homes in this area have been demolished and replaced with larger new homes or enlarged; however, this type of development maintains the prevailing density and predominant neighborhood pattern of one single-family home on one larger lot with ample setbacks.*

*As an exception to the prevailing character, in 1986, one larger lot located to the south of the subject site at 1254 Curtiss Avenue was subdivided into three smaller parcels and developed with three small-lot, single family residences (PDC86-045). In 2002 and in 2005, two larger lots were also subdivided into three and four smaller parcels and developed with three and four single-family residences, respectively (PDC01-084 and PDC05-031). These projects were developed prior to adoption of the 2040 General Plan in November 2011. The 2040 General Plan included clear policies to remedy this trend by discouraging any development of flag lots except in hillside areas.*

*Specific development policies in the current General Plan were adopted to support Council Policy 6-19, which states that flag lots are not appropriate in situations where a series of larger lots could be converted to smaller lots, thereby raising the density and changing the character of the neighborhood. Allowing the subject site to be subdivided into three smaller lots would result in the further conversion of large lots along Curtiss Avenue into smaller parcels, thereby raising the density and further changing the character of the neighborhood.*

*While shallower lots and the aforementioned developments contribute to an increase in residential density, the average density of the neighborhood is 6.7 DU/AC. The subject site is currently developed with a single-family residence which yields a density of 2.38 DU/AC. Development of the site with three single-family residences, as proposed, would result in a density of 7.14 DU/AC, which exceeds the prevailing neighborhood density and is entirely inconsistent with the densities of the properties that directly border the site to the north and south (3.22 DU/AC and 3.7 DU/AC, respectively).*

*Based on all of the above, the proposed flag lot is inconsistent within the historic and prevailing development pattern in an established, single-family neighborhood and would not improve or enhance or maintain the quality and character of the surrounding area and contrary to the General Plan policies and City Council Policy 6-19.*

The proposed project is also inconsistent with the following General Plan policies:

- a. Land Use Policy LU-9.15: New single-family flag lots may be appropriate on hillside properties but are discouraged within other parts of the City. Flag lot development in non-hillside areas should have a clear and visible relationship

to the neighborhood and the street and should be consistent with the applicable zoning district which can assure that relationship. To strengthen neighborhood preservation policies and objectives of this plan, the City Council has adopted a policy establishing criteria for the use of flag lots.

*Analysis: The subject site is **not** located in a hillside area, and as discussed above, the proposed Planned Development is inconsistent with several General Plan land use policies and Council Policy 6-19: Flag Lot Development in Residential Neighborhoods. As for the proposed project, the sole purpose of the flag lots is to accommodate the development of two additional single-family residences on a large parcel in an established single-family neighborhood. If approved, the proposed Planned Development Rezoning and Planned Development Permit would allow the applicant to file for a parcel or tentative map to enable subdivision of the existing large lot into three smaller buildable lots and one common lot for a shared driveway. The two rear residences would be largely hidden from view and would not have a clear and visible relationship to the neighborhood or the street. The proposed flag lots would not be consistent with the prevailing form and pattern of development in the surrounding neighborhood, which features one single-family home on large lots with deep rear setbacks. In this case, the proposed flag lot would create a unique lot configuration with three lots differing in size, shape, and dimensions from the majority of other lots in the surrounding neighborhood.*

*The City Council adopted Policy 6-19 in December 1990 to establish specific criteria for flag lots. This policy states that flag lots are not appropriate in situations where a series of large lots could be converted to flag lot developments, thereby raising the density and changing the character of the neighborhood. As discussed above, three flag-lot developments currently exist to the north and the south of the subject site. These flag lots were approved under the previous 2020 General Plan and would not be supported under the current development policies of the Envision San José 2040 General Plan and Council Policy 6-19. Allowing the subject site to be subdivided into three smaller lots would continue the conversion of large lots into smaller parcels, thereby raising the density and further changing the character of this neighborhood.*

- b. Land Use Policy LU-11.1: Design all new single-family detached residences so that each home has a frontage on a public street or on a private street that appears and functions as a public street.

*Analysis: The proposed project would result in the development of three single-family detached residences on separate lots, including two flag lots and one common lot (Parcel A) for the shared private driveway. The residence identified as Unit No. 1 would have 56 feet of frontage on Curtiss Avenue, but the residences identified as Unit Nos. 2 and 3 would be located behind Unit No. 1 and would not have significant frontage on a public street or a private*

*street. As discussed above, each lot would have access from Curtiss Avenue via a common private driveway along the northern boundary of the property. This 16-foot ingress/egress easement is designed as a private drive, not a public or private street. Furthermore, no sidewalk or pedestrian access is provided along the shared driveway which is typical in the design of public and private streets.*

- c. Land Use Policy LU-11.2: Support subdivisions of residential lots if the new lots reflect the established pattern of development in the immediate area, including lot sizes and street frontages. Discourage residential developments, such as court homes or flag lots, that increase residential densities for an area or disrupt an established neighborhood pattern. Allow new development of a parcel, including one to be subdivided, to match the existing number of units on that parcel; design such subdivisions to be compatible with and, to the degree feasible, consistent with the form of the surrounding neighborhood pattern. Consider allowing second units (granny or in-law units) in lieu of creating flag lots, substandard lots or parcels that disrupt an established neighborhood pattern.

*Analysis: As discussed under the General Plan analysis above, the proposed flag lot does not reflect the historic and prevailing pattern of development in the surrounding neighborhood. Curtiss Avenue is developed primarily with single-family residences on rectangular lots of varying depths and sizes. The proposed flag lot would result in lot sizes that are consistent with the smaller single-family lots in the neighborhood; however, these smaller neighborhood lots contain single-family residences that are oriented towards and have frontage on Curtiss Avenue. Three small-lot, flag lot projects have been developed to the south and north of the subject site, but these and a handful of other higher density properties were approved prior adoption of the Envision San José 2040 General Plan, are exceptions to the historic and prevailing development pattern in this neighborhood, and therefore should not be cited as precedent to support the current proposal. The proposed flag lot would create another exception to the historic and prevailing development pattern in an established, single-family neighborhood and would not improve, enhance, or maintain the quality and character of the surrounding neighborhood.*

- d. Implementation Policy IP-1.7: Use standard Zoning Districts to promote consistent development patterns when implementing new land use entitlements. Limit use of the Planned Development Zoning process to unique types of development or land uses which cannot be implemented through standard Zoning Districts, or to sites with unusual physical characteristics that require special consideration due to those constraints.

*Analysis: City Council Policy 6-19 requires that new flag lots be created through the Planned Development zoning process. The subject site is located within a standard R-1-8 Residence Zoning District site and is similar to other*



*large lots with deep rear setbacks in the surrounding neighborhood. The existing one-story single-family residence at the front of the site is also consistent with the prevailing development pattern of the surrounding neighborhood.*

*The proposed Planned Development would allow the creation of three smaller lots and the construction of three, two-story single-family residences. Two of the residences would not have frontage on Curtiss Avenue. The subject site is not constrained by unusual physical characteristics as other properties in the area have similar dimensions, and the only purpose of the proposed flag lot development would be to accommodate additional development on the property.*

- 5. City Council Policy 6-19: Flag Lot Development in Single-family Neighborhoods.** Council Policy 6-19 provides specific flag lot criteria for flat land areas. In established, predominantly single-family detached neighborhoods, the following criteria shall apply:

- a. Flag lots are not appropriate in situations where a series of large lots could be converted to flag lot developments, thereby raising the density and changing the neighborhood character.

*Analysis:* See discussion above.

- b. Neighborhoods that may be appropriate for flag lot development have uniformity of single-family lot sizes, but with an occasional and unique-for-its-neighborhood larger parcel, suitable for flag lot projects.

*Analysis:* The existing prevailing neighborhood character of Curtiss Avenue is defined by single-family homes and standard lot shapes (rectangles) of varying depths. The subject site is one of several historically larger parcels. As previously discussed, a pocket of multi-family residential units exists to the north of the site as well as three larger lots to the south and north of the site that were subdivided into 10 smaller parcels in 1986 and the 2000's. Subdivision of the subject site into three smaller lots, including two internal flag lots, could possibly be the catalyst for a series of conversions from large lots to small lots as several other parcels along Curtiss Avenue could also seek similar redevelopment. The subject site is not unique in its neighborhood as roughly twelve other properties in the adjacent neighborhood have similar dimensions and deep rear setbacks.

- c. In neighborhoods which are designated medium low density residential (8 DU/AC), parcels considered for flag lot development are recommended to be approximately 8,000 square feet in size. At a minimum, the parcel must be larger than the average, or of a unique configuration, in the surrounding area in order to generously meet R-1 setback zoning codes.

*Analysis: The subject site contains approximately 18,573 square feet. The proposed project would result in three single-family homes, including two on flag lots – a front lot (Unit No. 1) containing approximately 5,208 square feet, a middle lot (Unit No. 2) containing approximately 3,747 square feet and a rear lot (Unit No. 3) containing approximately 5,945 square feet. The proposed lot sizes are inconsistent with this policy and do not provide adequate space to meet the development standards of the R-1-8 Zoning District. In addition, the irregular shape and location of the two smaller flag lots away from the street are inconsistent with the prevailing neighborhood character.*

- d. Flag lot units located away from the street shall maintain a presence to the street, be oriented to the street, and be visible from the street. A larger front unit is not acceptable as a means to meet the street presence requirement.

*Analysis: The proposed residences on Unit No. 2 and Unit No. 3 would be set back approximately 100 feet and 170 feet, respectively, from Curtiss Avenue, which is significantly deeper than the typical 20- to 25-foot front setback for other single-family residences in this area and required by the R-1 development standards. The residence on Unit No. 2 does not conform to the above policy as it has no presence on Curtiss Avenue and is neither oriented toward nor visible from the street. Although a portion of the residence identified as Unit No. 3 would be partially visible from the street and its front door is oriented towards Curtiss Avenue, it has limited visibility beyond the unit identified as Unit No. 1 and is inconsistent with the intent of the above objective.*

- e. Flag lots shall be approved only through the Planned Development zoning process.

*Analysis: Development of the proposed flag lot requires City Council approval of this application for a Planned Development Rezoning from the R-1-8 Single-Family Residence Zoning District to the R-1-8(PD) Planned Development Zoning District and a subsequent Planned Development Permit and Tentative Map. However, as noted in General Plan Implementation Policy IP-1.7, the City discourages the use of the PD Rezoning process as standard zoning districts are intended to allow the appropriate type and intensity of development in a particular area. Furthermore, the subject site is not unique nor merits special considerations beyond other properties in the surrounding context.*

- f. Orientation, setbacks, and private yards should conform to the following criteria:
  - i. All units shall orient to the street.

Analysis: The residence identified as Unit No. 2 is not oriented toward Curtiss Avenue. While the front door of the residence identified as Unit No. 3 is oriented west toward Curtiss Avenue, it does not have a significant presence due to limited visibility and a deep setback from the street.

- ii. Each unit shall have both a “front” and “rear” yard on opposite sides of the unit.
- iii. Front yard setback for the front unit must match neighborhood pattern. “Front” setbacks for rear units must meet R-1 standards.
- iv. Rear yards for all units shall be a minimum of 1200 square feet, with a minimum dimension of 25 feet.

Analysis: Consistent with the R-1-8 development standards and the prevailing neighborhood development pattern, Unit No. 1 would maintain a 25-foot front setback from Curtiss Avenue and a five-foot side yard setback from the adjacent residence; however, the rear setback is not consistent with the required 20-foot rear yard setback of the R-1-8 Zoning District. The front and rear setbacks of Unit No. 2 do not meet these development standards nor does the front setback of Unit No. 3.

As proposed, Unit No. 1 would have an approximately 765-square foot rear yard area (17 feet, 1 inch depth), Unit No. 2 would have an approximately 416-square foot rear yard area (15 feet, 8 inches depth), and Unit No. 3 would have an approximately 1,660-square foot rear yard (21 feet, 4 inches depth). None of the rear yards meet the minimum dimension of 25 feet, and only Unit No. 3 meets the minimum area.

- v. Setbacks from interior project boundaries should be 10 feet on the first floor and 20 feet on the second floor to neighboring rear yard, and 5 feet from a neighboring side yard.

Analysis: All interior setbacks are five feet, which is inconsistent with the above standards. The side setback from Unit No. 2, which is adjacent to the rear yard of Unit No. 1, is proposed to be five feet for both the first and second floors.

- vi. A common driveway for all units is encouraged; multiple driveways are discouraged.
- vii. Driveways shall be a minimum of 10 feet wide, with a minimum of three feet of landscaping on either side.

Analysis: All three residences would share an access driveway from Curtiss Avenue. The proposed driveway would have a width of 16 feet and three feet of landscape on either side.

- viii. Parking ratios for each unit shall be in conformance with the Residential Design Guidelines, varying by unit size. Guest parking for units not having street frontage shall be provided at each unit.
- ix. Adequate vehicle turnaround space shall be provided for each unit (typically a 26-foot minimum dimension).

*Analysis: Consistent with the Residential Design Guidelines, each unit would have an attached two-car garage and a private driveway area approximately 18 feet in length in front of each garage to accommodate two additional guest parking spaces. The combined dimensions of the private driveway areas and the shared common driveway (Parcel A) provide adequate space for vehicle turn-around. However, Unit No. 3 exceeds the maximum 150-foot "hose" reach required by the Fire Department; therefore, adequate emergency vehicle access would be required. The current site design does not provide adequate emergency vehicle access.*

- x. To protect the privacy of yard areas on neighboring properties, large windows and decks on the second floor shall orient to on-site yard areas, not to surrounding properties.

*Analysis: The current plans call for three, two-story single-family residences. The balconies on the second floor of each unit are oriented towards the north, onto the common driveway. The applicant did not provide an exhibit showing how second-story windows would be oriented to protect the privacy of neighboring properties. This is a significant issue when two-story homes are proposed on flag lots that allow additional development at the rear of larger lots. Staff would need additional time to analyze the location of second-story windows on the proposed homes in relation to potential privacy concerns by the neighbors.*

- xi. Drainage shall follow pre-existing drainage patterns, which may require obtainment of easements from adjacent property owners. Padding up the rear of the site to achieve drainage to the street is discouraged.

*Analysis: The proposed rezoning application includes conceptual grading and drainage plans. Full project review, including referral to other City departments, was not completed for this project because the applicant requested to proceed directly to hearings by the Planning Commission and City Council with a recommendation for denial. The Public Works Department has not reviewed the application materials or issued a Final Memorandum indicating whether the project is in compliance with City stormwater requirements.*

- xii. The mass of the front and back units should be consistent with the average mass in the surrounding neighborhood.

*Analysis:* Properties immediately adjacent to the subject site on the north and south are developed with single-story, single-family residences. While the massing of Unit No. 1 steps back at the interfaces between these residences, the proposal includes a two-story massing along the street which is inconsistent with the historic development pattern of the neighborhood. The second floors of Unit Nos. 2 and 3 also step back in response to adjacent single-story neighbors.

6. **Zoning Ordinance Compliance.** The subject property is located in the R-1-8 Single-Family Residence Zoning District which is intended primarily for single-family residences and secondary dwellings. Pursuant to the Table 20-60 of Section 20.30.200 of the San José Municipal Code, development in the R-1-8 Zoning District is subject to the following development standards.

	<b>R-1-8 Zoning Standard</b>	<b>Proposed PD Zoning Standard</b>
Minimum Lot Size	5,445 sf	Unit 1 – 5,208 sf Unit 2 – 3,747 sf Unit 3 – 5,945 sf
Front Setback:	20 feet	Unit 1 – 25 feet Unit 2 – 100 feet Unit 3 – 170 feet
Side Setback,	5 feet	All units – 5 feet
Rear Setback,	20 feet	Unit 1 – 5 feet Unit 2 – 5 feet Unit 3 – 20 feet
Maximum Height	35 ft., 2.5 stories	All units – 2 stories

Planned Development Zoning is required for the development of flag lots. The Planned Development Zoning may also allow any proposed deviations from the R-1-8 Zoning District development standards a show in the above Table.

7. **Residential Design Guidelines Conformance.** The development standards recommended in the Residential Design Guidelines are intended to ensure compatibility with existing development in the surrounding neighborhood. The applicant proposes to demolish the existing single-family residence, built in 1905,

in order to accommodate three, Spanish-style homes. While other properties along Curtiss Avenue have been redeveloped, either renovated or demolished and rebuilt, the proposed style is inconsistent with the existing architectural character of the neighborhood which is developed primarily with single-story craftsman style homes.

A majority of the older homes in this neighborhood have detached garages that are located at the rear of their property. The recently renovated or newly built homes have attached garages. While they do not follow the historic development pattern, these garages are located behind the main living areas and are not visible from Curtiss Avenue. The proposed units also contain attached two-car garages which are not visible from the public right-of-way.

Consistent with the Guidelines, the proposed massing of each unit steps away from the side and rear yards of the adjacent neighbors. The overall maximum height of the development is proposed at 28.5 feet, which is below the maximum height of 35 feet allowed in the R-1-8 Zoning District.

8. **Environmental Review.** Under the provisions of Section 15270 of the State Guidelines for Implementation of the California Environmental Quality Act, this Planned Development Zoning and Planned Development Permit are found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended (CEQA), if the public agency disapproves of the project. Section 15270 states that an initial screening of projects, based on the merits of the project, can be used for determining that the project would not be approved prior to the initiation of the CEQA process. Full environmental review was not performed by the City as lead agency, and submittal of a Historic Assessment of the existing residence was not provided to the City by the applicant. If Council supports the continued process of this proposed project, staff would need to complete full project review and environmental analysis for this proposed project. The project would then return to hearings for consideration by Planning Commission and City Council.
9. **Planned Development Findings.** Pursuant to Section 20.190.940, a Planned Development Permit may not be issued unless all of the following findings are made:
  - a. The Planned Development Permit, as issued, is consistent with and furthers the policies of the General Plan; and  
*Analysis: As explained in detail above, the Planned Development Permit is not consistent with nor furthers the policies of the General Plan in that the proposed flag lot configuration is inconsistent with Land Use Policy LU-9.15, which discourages the use of flag lot development in non-hillsides area of the City. Furthermore, the proposed residences would not have significant*

*frontage on a public street or a private street which is inconsistent with Land Use Policy LU-11.1.*

- b. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property; and

*Analysis: As explained in detail above, the proposed Planned Development Permit is not consistent with the site's current R-1-8 Zoning. The proposed Planned Development Zoning associated with the development is recommended for denial as it does not conform to City Council Flag Lot Policy 6-19 as well as the goals and policies of the General Plan, as discussed above.*

- c. The Planned Development Permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; and

*Analysis: As explained in detail above, the proposed Planned Development Permit is not consistent with the development standards of City Council Policy 6-19: Flag Lot Development. This policy was established to preserve the City's existing single-family neighborhoods from redevelopment with small-lot, high-density development. The policy explicitly states that flag lot developments are not appropriate in neighborhoods where a series of larger lots could be converted to flag lot developments, thereby raising the density and changing the neighborhood character. Development of the subject site with three single-family residences on separate lots, including two flag lots, would result in the fourth conversion of a large lot into smaller lots in the Curtiss Avenue neighborhood. This conversion could set a precedent for further flag lot development of at least 12 similar large parcels along Curtiss Avenue.*

*This project proposes lot sizes that do not meet the minimum lot size of 8,000 square feet as recommended in Council Policy 6-19. Unit No. 2 and Unit No. 3 would have no direct frontage on Curtiss Avenue, as required by Policy 6-19, and neither lot is oriented toward nor visible from the street. While a portion of the residence on Unit No. 3 would be visible from the street and its front door is oriented towards Curtiss Avenue, the proposed development has limited visibility beyond Unit No. 1 at the front of the site.*

- d. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious; and

*The proposed project includes the construction of three, Spanish-style homes. Although no other homes in the adjacent neighborhood are designed with a similar style, the massing and architectural character of the residences are compatible with one another and create harmonious aesthetic across the site but not with the neighborhood.*

- e. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

*Because this project was recommended for denial, the current environmental review is a statutory exemption under California Environmental Quality Act (CEQA) Guidelines Section 15270 for Projects Which Are Disapproved. Full environmental review was not performed because the applicant requested to proceed straight to public hearing before the Planning Commission and City Council.*

**10. Demolition Permit Evaluation Criteria.** Under the provisions of Section 20.80.460 of the San José Municipal Code, prior to the issuance of any development permit, which allows for the demolition, removal or relocation of a building, the following shall be considered to determine whether the benefits of permitting the demolition, removal or relocation outweigh the impacts of the demolition, removal or relocation:

- a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
- b. The failure to approve the permit would jeopardize public health, safety or welfare;
- c. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;
- d. The approval of the permit should maintain the supply of existing housing stock in the City of San José;
- e. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
- f. Rehabilitation or reuse of the existing building would not be feasible; and
- g. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

*The project includes the demolition of an existing single-story, single-family residence, which was constructed in 1905 and is located at the front of the site. This structure is not listed on the City's Historic Resources Inventory; however, its age may qualify as a historic resource. A Historic Assessment of the existing residence, which has not been submitted to the City by the applicant, would be required as part of the environmental analysis prior to demolition of the structure. Demolition of this residence for the construction of three, single-family residences would result in further densification of this*



*historically single-family neighborhood. Based on the above considerations, staff does not recommend demolition of this structure.*

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Based on all the above facts and findings for this proposed Planned Development Rezoning and Planned Development Permit application, this proposal to rezone the site to R-1-8 (PD) Planned Development Zoning District and a Planned Development Permit to allow the construction of three single-family detached residences on a 0.42 gross acre site, is hereby **denied**.

DENIED this 24<sup>th</sup> day of October, 2017, by the following vote:

AYES: ARENAS, CARRASCO, DAVIS, DIEP, JONES,  
JIMENEZ, KHAMIS, PERALEZ; LICCARDO.

NOES: NGUYEN, ROCHA.

ABSENT: NONE.

DISQUALIFIED: NONE.



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SAM LICCARDO  
Mayor

ATTEST:



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TONI J. TABER, CMC  
City Clerk

78395

**ORDER NO. : 0626029572**

## **EXHIBIT A**

The land referred to is situated in the County of Santa Clara, City of San Jose, State of California, and is described as follows:

LOT 20, as delineated upon that certain Map entitled "SKIDMORE TRACT MAP NO. 1", filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on in Volume "F3" of Maps, at Page 96.

APN: 429-01-005

